THE HON'BLE SMT JUSTICE T MEENA KUMARI
AND
THE HON'BLE SRI JUSTICE G CHANDRAIAH

W.P.Nos. 22191 of 2004
And
W.P.No. 1784 of 2005

COMMON ORDER (per Hon'ble Smt. Justice T Meena Kumari):

1. Since the subject involved in these matters is one and the same and arise out of the impugned judgment passed in O.A. No. 1389 of 2002 dated 19-1-2004 on the file of the Central Administrative Tribunal, Hyderabad, both these matters were dealt with together and we feel it appropriate to dispose of the same by a common order.

2. The O A was filed by one P. Nehemiah, applicant therein, seeking for a direction to the 1st respondent therein to promote him as Assistant Personnel Officer (APO), from the date when one Roshan Ahamed (the 6th respondent therein) was appointed to that post with all attendant benefits including arrears of salary and to set aside the impugned order dated 30.3.2001 issued by the 2nd respondent therein insofar as it denies the promotion to him as APO and promoting the Respondent No. 6 to the said post, declaring the same as illegal and unconstitutional.

3. The case of the applicant in the O.A in brief was that he was appointed as Junior Clerk in South Central Railway on 25.1.95 and was promoted as Senior Clerk in 1998. Later he was promoted as Welfare Inspector Grade-III in 1993, Welfare Inspector Gr. II in 1996 and Welfare Inspector Gr.I during 1997 and he has been working in the said capacity. While so, in pursuance of the Notification dated 19.7.2000 issued by the Railway Department(2nd respondent) to fill up

3 posts of Assistant Personnel Officer by proposing to hold a Limited Departmental Competitive Examination for 30% quota selection on the basis of the assessment of vacancies for the period from 1.10.99 to 30.9.2001, since he belongs to SC community, he applied for the same. Out of said 3 posts, two were unreserved and one was reserved for SC and no posts were reserved for STs. He was also subjected to the written test along with other candidates and that in the list of successful candidates in the written examination published by the 2nd respondent his name was placed at Sl.No.2 and in the bracket against his name, his caste was indicated as (SC). Later on, he also attended viva-voce that was held on 29.3.2001. Thereafter, the Board published a panel of selected candidates on 30.3.2001 containing the names of un-official respondents 4,5 and 6 i.e., P Radhakrishna (SC), S Krishnaji Rao, Roshan Ahmed.

It is also his case that even though P Radhakrishna, who secured maximum number of marks in the selection on his own merit, belongs to SC community, his name should have been shown in the two vacancies meant for Unreserved candidates in stead in the post meant for SC community as he stood first in the selection. But the authorities erroneously allotted the vacancy of SC category to said P Radhakrishna. Since he stood 4th in the merit list and belongs to SC community, he should have been given the vacancy meant for SC category and the remaining 2nd unreserved post to S Krishnaji Rao.

It is his further case that he submitted a representation in this regard through the 3rd respondent to the 2nd respondent and other including the Chairman/National Commission/SC/ST, New Delhi. When the matter was taken up by the Commission, the Board sent it's reply stating that the selection was done strictly in compliance with the

instructions issued by the Railway Board, New Delhi dated 14.4.83, 16.6.92 and dt. 30.6.99 respectively and thereby his claim for promotion was denied. It is further stated in the O.A that according to the instructions contained in Railway Board Orders dated 6.7.92, letter dt. 29.7.93 and also in view of the orders passed by the Central Administrative Tribunal, Madras Bench in O.A.No. 891/96 dated 27.11.98, he is entitled to be promoted to the post of AP in respect of vacancies reserved for SC candidate. Hence, the O.A.

4. The case of the official respondents in the O.A, through their reply statement, in brief is that P Radhakrishna (4th respondent) who belongs to SC community came first in the order of merit in the Limited Departmental Competitive Examination conducted for the post of APO and was included as a candidate al Sl.No.1 in the panel of selected candidates. They have also admitted the fact that the applicant is 4th in the order of merit. However, they contended that since the 4th respondent belongs to SC community, the vacancy reserved for SC candidate has been given to him and the respondents 5 and 6 who belongs to OBC community who are included in the panel at Sl.No. 2 and 3 in the panel are given two general vacancies and all the 3 promotees were promoted to the post of APO. The respondents further contended that the action taken by them is strictly in accordance with the Railway Board's instructions governing the matter. As per Railway Board's letters dated 14.4.83, 21.9.90, 16.6.92 and 30.6.99, as far as promotional categories are concerned, those SC/ST candidates who qualify in promotional tests with general standards should be empanelled first against the reserved vacancies. In case adequate number of SC/ST employees are not available as per general merit in the panel to fill up the reserved posts, additional SC/ST candidates to the extent of the deficiency may be placed on the

panel applying the specified relaxed standards and till the reserved quota is filled, further SC/ST candidates may be considered for adhoc promotion under the next among who failed candidates. The application of relaxed standards arises only if there is a deficiency in the number of reserved candidates with general standard are available to the required number, and such candidates alone should be empanelled against reserved point. The respondents therefore prayed for dismissal of the O.A.

5. The Central Administrative Tribunal after hearing both the parties and also considering the records, passed a very elaborate order allowing the O.A filed by P. Nehemiah and set aside the order dated 30-3-2001 so far as it relates to the promotion given to Roshan Ahmed-the 6th respondent therein denying the same to the applicant as Assistant Personnel Officer and also declared it as illegal and further directed the official respondents to empanel the applicant therein in the reserved vacancy and to give a notional promotion as Assistant Personnel Officer from the date when the 6th respondent was appointed as Assistant Personnel Officer. It is made clear by the Tribunal that the applicant therein is entitled for fixation of pay promotion including the seniority and service benefits for all purposes and also entitled for salary from the date of assuming charge by setting aside the promotion to 6th respondent in the O.A to the post of Assistant Personnel Officer. Aggrieved by the said order, the Railways filed WP No. 22191 of 2004 and the affected party viz., Roshan Ahmed (6th respondent in the O.A) filed W.P No. 1784 of 2005.

6. For the sake of convenience the parties are referred to herein as arrayed in the O.A. before the Tribunal.

GROUNDS ; (W.P. No. 22191 of 2004):

7. Aggrieved against the directions issued by the Central Administrative Tribunal in the O.A., the South Central Railway department/official respondents therein filed the present writ petition to declare the judgment dated 19.01.2004 in O.A. No. 1389 of 2002, the order dated 12.8.2004 in RASR No. 355 of 2004 and the order dated 28.10.2004 in MA 664/2004 in OA 1389 of 2002 as bad, illegal and to quash the same.

The writ petitioners reiterated the contentions rose in their reply statement filed in the O.A. The main grounds urged in the writ petition are that the Central Administrative Tribunal failed to appreciate that the panel is prepared to fill up the three posts, one 'SC' plus two 'OC's of Assistant Personnel Officer against the 30% quota and the 'SC' point having been consumed by second respondent i.e., P Radha Krishna, the directions of the Tribunal to include the first respondent P Nehemiah in the panel by removing Roshan Ahmed is unjust and improper and that reliance placed by P Nehmaiah on the Railway Board's clarification letter dated 11.7.2002 for the Administrative Reform Circular dated 7.5.2003 in support of his case is incorrect and untenable. It is also urged that the Tribunal failed to appreciate that P Radha Krishna could not be relegated to a lower position in the panel by adjusting him against the 'UR' vacancy in place of S Krishnaji Rao while being an 'SC' who have been rightly placed in the 1st position by virtue of his grading as 'GOOD' and seniority in the gradation list. It is stated that the 1st respondent as an 'SC' candidate could not steel march over the existing 'SC' candidate and adjusted against the 'UR' vacancy on the basis of his high marks. Hence, the official respondents pray to set aside the impugned order of

the Central Administrative Tribunal.

GROUNDS (W.P.No. 1784 of 2005):

8. The petitioner herein is the affected 6th respondent in the O.A. The 1st respondent herein filed the O.A, seeking for a direction to the General Manager, South Central Railway, Secunderabad (R2 herein) to promote him as Assistant Personnel Officer (APO), from the date when the 6th respondent (petitioner herein) was appointed to that post with all attendant benefits including arrears of salary and to set aside the impugned order dated 30.3.2001 issued by the Chief Personnel Officer, S.C.R. Secunderabad (3rd respondent herein) insofar as it denies the promotion to the applicant in O.A as APO and promoting the 6th respondent therein to the said post, declaring the same as illegal and unconstitutional.

It is averred by the petitioner in the affidavit filed in support of the writ petition that on the basis of empanelment he was promoted to the post of Asst. Personnel Officer on 17-6-2002 in his turn and is continuing as such. It is also averred in the grounds that P Radhakrishna was empanelled against 'SC' point, who availed the benefit of Reservation for the accelerated promotions in the lower posts, as such Radhakrishna was correctly shown and empanelled against 'SC' point and therefore Radhakrishna cannot be considered to have been empanelled against unreserved post. It is also averred in the writ petition that the selection in question was finalized on 30.3.2001 on the basis of instructions of the Railway Board then in force dated 30-6-1999 and as per these instructions, the 'SC' employee who came on merit has been accommodated against the reserved point of 'SC' and that SC/ST employee who come up in the

panel have to be adjusted against SC/ST points and the deficiency of SC/ST, if any, is to be met from picking up the next respective employees, down below the list. Further, it is averred that the revised instructions not to adjust the 'SC/ST' candidates appointed by promotion on their own merit and not owing to reservation or relaxation of qualifications against the reserved point, have been consciously given effect to from 07.08.2002 prospectively by the Railway Board, which is a date long after the finalization of the impugned selection published on 30.3.2001, and therefore not applicable for the selection in question. As such, the order of the Tribunal is liable to be set aside.

CONTENTIONS:

9. When these matters come up for hearing, learned counsel appearing for the Railways contended that the Tribunal erred in holding that empanelment of Roshan Ahmed in the SC post is illegal and he also relied upon the Railway Board circular issued on 14-4-1983. Basing on the above circular, learned counsel contends that the judgment dated 27-3-2007 rendered by a Division Bench of Madras High Court in WP No. 30110 & 30111 of 2003 as confirmed by the Supreme Court in SLP Nos. 11013 & 11014 of 207 is not applicable to the present case for the reason that the vacancy notified for the Scheduled Caste Candidates is a backlog vacancy and hence the Scheduled Caste candidate who has empanelled as meritorious at Sl. No. 1 and who has got high marks has been adjusted against S.C post and the rest of the 2 candidates including the petitioner in WP No. 1784 of 2005 has been shown in the unreserved quota and hence there is no illegality in appointing Roshan Ahamed in the said post of Assistant Personnel Officer. It is also contended that even though the Division Bench of Madras High Court rendered the judgment following the judgment in "R K Sabharwal and others vs., State of PANJAB and

others (1995 (2) SCC 745)", case the learned standing counsel has argued that the official respondents have followed strictly the instructions issued by the Railway Board in filling up the carry forward vacancies and hence the finding of the Central Administrative Tribunal setting aside the appointment of Roshan Ahmed to the post of Assistant Personnel Officer as illegal is not sustained.

10. Learned counsel appearing on behalf of Roshan Ahmed i.e., the petitioner in WP No.1784 of 2005 has argued that in view of the fact that the posts notified are backlog vacancies meant for Scheduled Caste candidates, the same has to be filled up with S.C candidate at Roster point No. 15 and hence there cannot be any grievance for the applicant in O.A to question the said appointment of Roshan Ahmed under unreserved quota. The learned counsel further argued that even though the judgment laid down in R.K. Sabharwal case is based on Post Based Roster/Merit concept dated 10-02-1995, the same has no bearing on the facts of the present case. Learned counsel further argued that as per the merit list, even though P Radha Krishna (SC), obtained maximum marks, he should be shown in the reserved quota meant for SCs and another unreserved post should go to Krishnaji Rao, who stood at sl.No.2 in the list and therefore the third point at Roster point No.17 must go to unreserved candidate that is Roshan Ahamed, (the petitioner in WP 1784 of 2005) and as such the order of the Tribunal is liable to be set aside.

11. Learned counsel's arguments are based on the judgment of the Central Administrative Tribunal which needs no interference and she relied upon the Division Bench Judgment of Madras High Court dated 27-03-2007 in WP No. 30110/203 & WP No. 30111/2003, which has been confirmed by the Supreme Court. When the affected parties carried the matter in SLP Nos. 11013 and 11014 of 2007, the Supreme

Court while dismissing the SLPs has observed that as the petitioners therein were working for a long time in the promoted post, they may make a representation to the department and the department may consider their case sympathetically.

REASONS:

12. Heard both sides and perused the material available on record. The record shows that on 30-12-2004 a Division Bench of this Court while admitting the writ petition granted interim suspension of the impugned order for a period of 4 weeks which has been extended until further orders and by an order dated 6.6.2005 refused to vacate the interim direction in view of the judgment rendered by the Division Bench of Madras High Court.

13. The dispute involved in the matter is whether a 'SC' candidate who stood 1st in the merit list in the departmental examination has to be accommodated in the 'un-reserved' category in order of his own merit or in the 'reserved' category meant for 'SC' category. Turning to the facts of the case on hand, the official respondents-Railways issued notification to fill-up 3 posts of Assistant Personnel Officers through promotion and out of which, 2 posts are meant for 'unreserved' candidates and one post meant for 'SC' candidate.

14. On the directions given by this Court, the learned Standing Counsel for the Railways has produced the entire records before us. We have also gone through the particulars relating to the books of Roster points. The record shows that roster point No.1, which is meant for SC candidate, has been filled up with OC, roster point No. 4 which is meant for ST candidate has been filled with OC, roster point No. 8 which is meant for S.C has been filled up with OC, roster point No. 12

which is meant for ‘unreserved’ has been filled with ‘SC’ candidate, roster point No. 14 which is meant for SC has been filled up with ST, and roster point No.17 meant for ST has been filled with unreserved candidate.

The extract of roaster Point from the Register is as follows:

S.No.	Post reserved to SC ST	Post allotted to	Remarks	Other remarks
Point No.1	1	Filled up with ‘OC’	One SC to be filled up	Two SCs are available & one S.T. is available
Point No.4	1	-do-	S.T to be filled up	
Point No.8	1	Filled up with ‘OC’	S.C to be filled up	
Point No.12		Filled with S.C		
Point No.14	1	Filled with ST		
Point No.17	1	Filled with O.C		

In view of the filling up of the roster points as above, the posts which are meant for SCs have been filled up with OCs at roster point Nos. 1 and 8, there were two posts, which were available for S.C. candidates and that as roster point No.12 which is meant for unreserved candidate has been filled up with SC candidate in 1998, one (1) SC post has been advertised in the present notification in the year 2001. Further, roster point No. 4 pertains to S.T has been filled up with ‘OC’ candidate, but, however it has to be observed that in view of the fact that ST roster point remains unfilled it has to be carry forwarded and accordingly the post has to be filled up with ST/SC candidate only. The record submitted regarding the empanelment to the selection of the candidates shows that Roshan Ahammed got 271.8 marks,

Krishnaji Rao S has got 272.3, P.Nehmaiah has got 263, whereas P Radha Krishna has got 276 marks.

15. The Register shows that roster point Nos, 15 and 16 were meant for unreserved and roster point No.17 was meant for ST category. Even though P Radha Krishna got more marks, as he belongs to S.C community, he was shown in the SC category, and the other two posts have been filled up under unreserved category S Krishnaji Rao(OC) and Roshan Ahmed respectively. But, the circular No. 152/99 dated 13.6.99 reiterating the position in Railway Boards letter No. 83-E/(SCT)/42/1 dated 14-04-83, on which the learned standing counsel placed much reliance with regard to promotion and filling up of vacancies of the selection in question makes it very clear that

> "The concession in qualifying marks is granted to fill up the reserved vacancies only. This has already been clarified vide item 2 of Boards letter No. E/SCT/68 CM15/10 dated 23-10-69. It is, however, further clarified that by applying the general standard for qualifying a selection and empanelment, the selection committee should first draw a list of candidates who can be empanelled. This list should be checked up whether this contains the required number of candidates belonging to SC and ST as per the 40 point roster. In case of deficiency, the same should be made good by including the other reserved candidates who pass by applying relaxed standards.
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> Xxxxx
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> It is not necessary to call the SC/ST candidates for interview in a separate block when the reserved candidates are considered against the unreserved vacancies. However, the inclusion of a SC/ST member in the Selection Committee is necessary."

16. The record shows that roster point No.12, which is meant for unreserved candidate has been filled up with S.T and hence one post is available for SC. Roster point No.14, which is meant for SC,

has been filled up with ST candidate. Roster point No. 8 which is meant for ST has been filled up with 'OC' candidate on 26-2-1994 and hence it has to be carry forwarded to the next recruitment and as a result of which the next SC candidate should be appointed at roster point No.14. But in view of the fact that as roster point no. 12 meant for OC has been filled up with SC candidate it is contended that no particular vacancy was available however in view of roster point No.14 has been filled with OC candidate, one post of ST must go to SC candidate. Record also shows that as per the merit list, P Radha Krishna, even though belongs to SC candidate, he should have been appointed, in order of merit, under unreserved quota. The contention of the Railway Board is that P Nehemiah cannot be shown in SC as there is no deficiency of SC candidates and the appointments made by them cannot be said that they are against the guidelines laid down in the Railway Boards letter No. 83-E/(SCT)/42/1 dated 14-4-1983, which says that in case of deficiency, the same should be made good by including the other candidates who passed by relaxing the standards. As per record Roster point No.16 which is shown for unreserved has gone to Krishnaji Rao S who is next meritorious candidate. But the dispute is with regard to Roster point No. 17 which is meant for ST but which has been filled up with Roshan Ahamed(OC) who is the unsuccessful candidate before the Tribunal who filed the WP has shown in unreserved candidate. The notification shows that it is not notified for ST candidate, in such a case Roster point No. 14 has been filled up with ST candidate, which is meant for SC candidate which goes to show that roster point 14 has to be carry forwarded and the next merit candidate available as per the record at Sl.No. 2 is one P Nehmaiah who belongs to SC candidate. Further, P Radha Krishna, as he belongs to SC community, though he secured highest marks of

276, cannot be considered under reserved quota merely because he belongs to SC community and his case shall be considered only against unreserved quota and the Tribunal rightly corrected the mistake committed by the Railway Board. Record shows that notices were served on respondents 2 and 3, but, however, there is no representation either through counsel or in person.

17. It is the grievance of P Nehemiah that as he stood 4th in the general merit and as he belongs to SC community, he should have been empanelled under SC category, being obtained highest marks of 263 among SC candidates his case should have been considered for the SC post, but the official respondents did not do so and therefore the in action of the Railway Board to deprive of him for consideration of his candidature to the post of Assistant Personnel Officer is illegal. In view of the above contention, we had also an occasion to go through the record taking into consideration the judgment of the Central Administrative Tribunal. The admitted fact remains is that P Nehmaiah, SC candidate obtained 263 marks and after him as roster point Nos. 15 and 16, which are meant for unreserved candidates, were filled up with meritorious candidates, the roster point No.17 should go to SC candidate as roster point No.14 meant for SC, was filled up with ST candidate. Since ST candidate is not available, it should have been filled up with SC candidate, and may be with that intention the Railways Board advertised for 3 posts, wherein 2 posts have been notified under unreserved and 1 post for SC candidate. In view of the above discussion, the said post should go to P Nehmaiah, who is the applicant in the OA, as rightly pointed out by the Central Administrative Tribunal.

18. Further, the Supreme Court in "R K Sabharwal and others v., State of Punjab and others[1], held that:

> "When a percentage of reservation is fixed in respect of a particular cadre and the roster indicates the reserve points, it has to be taken that the posts shown at the reserve points are to be filled from amongst the members of reserve categories and the candidates belonging to the general category are not entitled to be considered for the reserve posts. On the other hand, reserve category candidates can compete for the non-reserved posts and in the event of their appointment to the said posts their number cannot be added and taken into consideration for working out the percentage of reservation. For making any provision for reservation of appointments of posts in favour of any backward Class of citizens, it is incumbent on the State Government under Article 16(4) of the Constitution of India to reach a conclusion that the Backward class/classes for which the reservation is made is not adequately represented in the State Services. When the State Government after doing the necessary exercise makes the reservation and provides the extent of percentage of posts to be reserved for the said backward class then the percentage has to be followed strictly. The prescribed percentage cannot be varied or changed simply because some of the members of the backward class have already been appointed/promoted against the general seats. The fact that considerable number of members of a backward class have been appointed/promoted against general seats in the State Services may be a relevant factor for the State Government to review the question of continuing reservation for the said class but so long as the instructions/rules providing certain percentage of reservations for the backward classes are operative the same have to be followed."

The Division Bench of Madras High Court followed the above view in D.W. Samuel and another' case and when the affected parties therein preferred SLP Nos. 11013 –11014/2007, the Apex Court, while dismissing the above SLPs, observed that since the petitioners therein have been working for a long time in the promoted post, they may make a representation to the department and the department may consider their case sympathetically.

The Apex Court in Indra Sawhney v. Union of India[2] held as follows:

> "In this connection it is well to remember that the reservations under Article 16(4) do not operate like a communal reservation. It may well happen that some members belonging to, say, Scheduled Castes get selected in open competition field on the basis of their own merit; they will not be counted against the quota reserved for Scheduled Caste; they will be treated as open competition candidates."

It is well settled that if a candidate is entitled to be admitted/promoted on the basis of merit, the same should not be counted against the quota reserved for such category (SC/ST) or any other reserved category but such a candidate will be considered for admission/promotion along with other candidates treating him as if he belongs to general category.

19. Under the above circumstances, the selection of P Radhakrishna(SC) should be treated as against the general vacancy (unreserved vacancy) and not against the reserved vacancies inasmuch as by virtue of securing high marks in the written examination and the viva voce, he qualified for promotion on his own merit, ability and performance ability and not owing to reservation or relaxation of qualifications. The Railways were wrong in showing his selection as against the reserved vacancy. Thus, the Central Administrative Tribunal rightly corrected the mistake committed by the Railways and set aside the impugned order and held that P Radha Krishna is to be shown against the merit quota (un-reserved). When once it is held that the selection of P Radha Krishna is to be counted as against the unreserved vacancy, the SC vacancy should be filled by selecting one best scheduled caste candidate out of the remaining candidates available in the list. Therefore, the Tribunal set aside the appointment of Roshan Ahmed. For the above reasons, we confirm

the said finding of the Tribunal.

20. At this stage, the learned counsel appearing for Roshan Ahmed(the petitioner in WP No. 1784 of 2005) has contended that in view of the fact that the petitioner is holding the post since last 6 years, the Board may be directed to continue the petitioner in such post in the existing vacancy without disturbing the seniority of P Nehemiah.

21. We see some force in the contention raised and accordingly liberty is granted, allowing Roshan Ahmed (Petitioner in WP No.1784 of 2005) to make a detailed representation and that as and when such a representation is made the department shall consider his case in any existing vacancies. Subject to the above observation, both these writ petitions are dismissed.

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JUSTICE T MEENA KUMARI

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JUSTICE G CHANDRAIAH

5-7-2007
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THE HON'BLE SMT JUSTICE T MEENA KUMARI
AND
THE HON'BLE SRI JUSTICE G CHANDRAIAH

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COMMON ORDER IN
W.P.Nos. 22191 of 2004
And
W.P.No. 1784 of 2005

(per the Hon'ble Smt. Justice T Meena Kumari)

05th September 2007

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[1] 1995 SCC (L&S) 548

[2] 1995 2 SCC 745